

RWANDA / JUDGMENT

BIZIMANA v UWASE

RLR V.2-2022

COURT

Supreme Court

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RS/INJUST/RC 00015/2017/SC

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BIZIMANA v UWASE

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Text

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BIZIMANA v UWASE [Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RC 00015/2017/SC (Ntezilyayo, P.J, Nyirinkwaya, Cyanzayire, Hitiyaremye na Rukundakuvuga, J.) 23 Kamena 2020] Amategeko agenga imiburanishirize y'imanza zasabiwe gusubirishamo ku mpamvu z'akarengane – Kutitaba kwababuranyi – Iyo mu kirego kigamije gusubirishamo urubanza ku mpamvu z'akarengane, nta muburanyi n'umwe witabye nyuma y'imihango yose y'ihamagara iteganywa n'itegeko, nk'uko bigenda mu nzira zindi z'imiburanishirize y'imanza, Urukiko rushobora kwimurira urubanza ku wundi munsu, cyangwa gusiba urubanza mu gihe bigaragarira urukiko ko ababuranyi badafite inyungu yo gukurikirana urubanza rwabo. Incamake y'ikibazo: Uwase yareze Bizimana mu Rukiko rw'Ibanze rwa Gisenyi asaba ubutane, Urukiko rwafashe umwanzuro rwemeza ko batanye burundu, rutegeko umutungo bahahanye ugizwe n'inzu ebyiri, imwe igumana Bizimana wayibagamo naho Uwase akagumana indi, moto bafite bakayigurisha bakagabana amafaranga naho umwenda wa banki bafite bagafatanya kuwishyura. Abana babiri bayaranye bakarerwa na Uwase, Bizimana ategukwa kujya atanga amafaranga 10.000 buri kwezi. yo kumufasha kubarera. Bizimana ntiyishimiye imikirize ajuririra Urukiko Rwisumbuye rwa Rubavu. Urukiko rwaciye urubanza rwemeza ko ubujurire bwa Bizimana bufite ishingiro kuri

bimwe; rutegeka ko umutungo ugizwe n'inzu 2, ugomba kwandikwa ku bana babo bagahagararirwa na Bizimana na Uwase, kandi Bizimana na Uwase bakaba batemerewe kuwugurisha; rwemeza ko imikirize y'urubanza rwajuririwe ihindutse gusa ku birebana n'umutungo ugizwe n'amazu. Bizimana ntiyishimiye imikirize y'urubanza, yandikira Urwego rw'Umuvunyi asaba ko urubanza rwaciwe n'Urukiko Rwisumbuye rwa Rubavu rusubirwamo ku mpamvu z'akarengane, kuko Urukiko rwategetse ko umutungo yashakanye na Uwase uhabwa abana babo, ukanabandikwaho kandi atari ko itegeko riteganywa kuko riteganywa ko mu gihe cy'ubutane bwa burundu abashakanye bagabana umutungo wabo ku buryo bungana. Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba ko urubanza rusubirwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ikirenga nawe yemeza ko urwo rubanza rwongera ku buranishwa n'Urukiko rw'Ikirenga. Itariki y'iburanisha igeze, nta muburanyi n'umwe witabye kandi bose barahamagajwe muburyo no munzira zikurikije amategeko. Hakaba harazuzumwe ikibazo cyo kumenya uko bigenda iyo mu kirego kigamije gusubirishamo urubanza ku mpamvu z'akarengane, nta muburanyi n'umwe witabye nyuma y'imihango yose y'ihamagara iteganywa n'itegeko. Incamake y'icyemezo: 1. Iyo mu kirego kigamije gusubirishamo urubanza ku mpamvu z'akarengane, nta muburanyi n'umwe witabye nyuma y'imihango yose y'ihamagara iteganywa n'itegeko, nk'uko bigenda mu nzira zindi z'imiburanishirize y'imanza, Urukiko rushobora kwimurira urubanza ku wundi munsu, cyangwa gusiba urubanza mu gihe bigaragarira urukiko ko ababuranyi badafite inyungu yo gukurikirana urubanza rwabo, bityo bikaba bigaragara ko Bizimana nta nyungu afite mu rubanza yasubirishijemo ku mpamvu z'akarenga kuko yahamagajwe ntiyitabe Urukiko, urubanza rukaba rugomba gusibwa mu bitabo by'ibirego. Ikirego cyo gusubirishamo urubanza ku mpamvu z'akarengane kirasibwe.

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Amategeko yashyingiweho: Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu, ingingo ya 59 igika cya mbere Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Bizimana Twizerimana Théoneste yashyingiranywe na Uwase Furaha Marie Louise ku wa 15/07/2005, mu Murenge wa Nyamyumba, babyarana abana babiri ari bo Uwiduhaye Nadine wavutse muri Nzeri/2004 na Irabizi Didier wavutse ku wa 15/05/2008 ndetse bagira n'umutungo urimo amazu abiri na moto. Nyuma baje kugirana ubwumvikane buke kugeza ubwo Uwase Furaha Marie Louise atanga ikirego mu Rukiko rw'Ibanze rwa Gisenyi asaba ubutane. [2] Ku wa 31/10/2013 Urukiko rw'Ibanze rwa Gisenyi rwafashe umwanzuro mu buryo bukurikira:

- Rwemeje ko Uwase Furaha Louise atanye burundu na Bizimana uzwi ku izina rya Twizerimana Théoneste; - Rutegetse ko umutungo bahahanye ugizwe n'inzu ebyiri imwe iri mu kibanza nimeru 511 iri Rushubi-Rugerero igumana Twizerimana Bizimana Théoneste kuko n'ubundi ari yo asanzwe abamo, naho Uwase Furaha Marie Louise akegukana inzu iri mu kibanza nimeru 763 iherereye Rurembo-Rubona-Nyamyumba; - Rutegeka ko moto TVS ifite nimeru ya Chassis MD625DF44C1A71630 igurishwa amafaranga ayivuyemo bakayagabana ku buryo bungana; - Rutegeka ko ideni bafite muri Banki Vision ringana na 622.500 Frw bagomba gufatanya kuryishyura ku buryo bungana: buri wese akaba agomba

kwishyura 311.200 Frw noneho inyungu z'ubukererwe zizabarwa na Banki, nazo bagafatanya kuzishyura ku buryo bungana; - Rutegeka ko abana babiri babyaranye ari bo Uwiduhaye Nadine wavutse kuwa 09/2004 na Irabizi Didier wavutse kuwa 15/05/2008, bagomba kubana na nyina akaba ari we ubarera, noneho se Bizimana Twizerimana Théoneste akajya atanga buri kwezi 10.000Frws yo gufasha Uwase Furaha Marie Louise kubarera [3] Bizimana Twizerimana Théoneste yajuririye uru rubanza mu Rukiko Rwisumbuye rwa Rubavu, urubanza ruhabwa numero RCA 0043/14/TGI/RBV. Muri uru rubanza, Urukiko rwaburanishije gusa ku ngaruka z'ubutane zirebana n'igabana ry'umutungo bafite ndetse n'uwahererezwaho abana kuko bombi bashakaga kubagumana. [4] Ku wa 04/06/2014, Urukiko Rwisumbuye rwa Rubavu, rwaciye urubanza RCA 0043/14/TGI/RBV mu buryo bukurikira: a. Rwemeje ko ubujurire bwa Bizimana Twizerimana Théoneste bufite ishingiro kuri bimwe;

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- b. Rutegetse ko umutungo ugizwe n'inzu iri mu kibanza no 763 iherereye Rurembo- Rubona- Nyamyumba n'inzu iri mu kibanza numero 511 iri Rushubi-Rugerero, ugomba kwandikwa ku bana babo ari bo Uwiduhaye Nadine na Irabizi Didier bagahagararirwa na Bizimana Twizerimana Théoneste na Uwase Furaha Marie Louise, kandi Bizimana na Uwase bakaba batemerewe kuwugurisha; c. Rwemeza ko imikirize y'urubanza RC 0174/13/TB/GIS rwajuririye ihindutse gusa ku birebana n'umutungo ugizwe n'amazu. [5] Bizimana Twizerimana Théoneste yandikiye Urwego rw'Umuvunyi asaba ko urubanza RCA 0043/14/TGI/RBV rwaciye n'Urukiko Rwisumbuye rwa Rubavu ku wa 04/06/2014 rwasubirwamo ku mpamvu z'akarengane kuko Urukiko Rwisumbuye rwategetse ko umutungo yashakanye na Uwase Furaha Marie Louise uhabwa abana babo, ukanabandikwaho kandi atari ko itegeko riteganywa kuko riteganywa ko mu gihe cy'ubutane bwa burundu abashakanye bagabana umutungo wabo ku buryo bungana. [6] Nyuma yo gusuzuma icyo kibazo, Urwego rw'Umuvunyi rwasanze urubanza RCA 0043/14/TGI/RBV rwaciye n'Urukiko Rwisumbuye rwa Rubavu ku wa 04/06/2014, rukwiriye gusubirwamo ku mpamvu z'akarengane, maze rubisaba Perezida w'Urukiko rw'Ikirenga, nawe nyuma yo gusuzuma raporo y'Ubugenzuzi Bukuru bw'Inkiko, yemeza ko urwo rubanza rwongera kuburanishwa, ruhabwa RS/INJUST/ RC 00015/2017/SC. [7] Ku wa 23/06/2020, urubanza ruhamagazwa nta muburanyi n'umwe witabye kandi barahamagajwe mu buryo bukurikije amategeko; [8] Ikibazo kigomba gusuzumwa ni ukumenya uko bigenda iyo mu kirego kigamije gusubirishamo urubanza ku mpamvu z'akarengane, nta muburanyi n'umwe witabye nyuma y'imihango yose y'ihamagara iteganywa n'itegeko. II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA [9] Nyuma y'uko President w'Urukiko rw'Ikirenga yemeje ko urubanza N° RCA 0043/14/TGI/RBV rwaciye n'Urukiko Rwisumbuye rwa Rubavu ku wa 04/06/2014 rusubirishwamo ku mpamvu z'akarengane ku busabe bwa Bizimana Théoneste, ikirego cy'e cyanditswe mu gitabo cy'ibirego by'Urukiko rw'Ikirenga nk'uko byateganywaga n'ingingo ya 80 y'Itegeko ngenga No 03/12/OL ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha bw'Urukiko rw'Ikirenga. Bizimana Théoneste yahamagajwe kenshi hifashishijwe imyirondoro yatanze2

ariko ntiyabasha kuboneka ngo atange imyanzuro isobanura ibyo aburana nk'uko biteganywa n'ingingo ya 20 y'Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi. Byabaye ngombwa ko ahamagazwa nk'umuburanyi udafite aho abarizwa hazwi hakurikijwe ibiteganywa n'ingingo ya 45 iya 46 n'ya 49 al.2 ariko nabwo ntiyaboneka. [10] Uwase Furaha Marie Louise nawe yarahamagajwe ariko nk'uko biboneka ku nyandiko y'ihamagara, yanze kuyisinyaho avuga ko urubanza yaburanaga n'umugabo we yarutsinze ko

1 Reba icyemezo cya Perezida w'Urukiko rw'Ikirenga no 021/2017 cyo gusubirishamo ku mpamvu z'akarengane urubanza rwaciwe ku rwego rwa nyuma 2 Reba inyandiko ihamagara umuburanyi (assignation) yo kuwa 27/07/2017, iyo kuwa 23/11/2017 n' iyo kuwa 07/02/2019 3 Reba inyandiko ihamagara umuburanyi (assignation) yo kuwa 05/12/2019

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ndetse batangiye no kururangiza bakaba nta rundi rubanza bafitanye, ko abona ibindi ari ukumutekaho imitwe⁴. UKO URUKIKO RUBIBONA [11] Ingingo ya 59 (igika cya mbere) y'Itegeko No 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko "Iyo ku muni w'iburanisha nta muburanyi n'umwe witabye urukiko kandi ababuranyi baramenyeshajwe umuni w'iburanisha mu buryo bukurikije amategeko, urukiko rushobora kwimurira urubanza ku wundi muni, cyangwa gusiba urubanza mu gihe bigaragarira urukiko ko ababuranyi badafite inyungu yo gukurikirana urubanza rwabo." [12] Urukiko rw'Ikirenga rusanga iyi ngingo iha urukiko amahitamo hagati yo kwimurira urubanza ku wundi muni, cyangwa kurusiba. Urukiko rukaba rwemerewe gusiba urubanza igihe cyose birugaragarira ko ababuranyi badafite inyungu yo gukurikirana. [13] Muri uru rubanza, urukiko rusanga uwari urufitemo inyungu wa mbere ari Bizimana Twizerimana Théoneste kuko ariwe wasabye ko urubanza rwe rusubirwamo ku mpamvu z'akarengane akanabyemererwa. Ariko kuba yarabyemerewe agashakishwa ngo akore ibyo amategeko ateganya kugira ngo urubanza rwe ruburanishwe cyangwa se ngo na we yibwirize akurikirane ibyerekeye urubanza rwe, bigaragaza ko nta nyungu akirufitemo. Naho ku byerekeye uregwa, Uwase Furaha Marie Louise, we yagaragarije umuhesha w'inkiko wagiye kumumenyesha, ko nta nyungu afite muri uru rubanza ku buryo bweruye nk'uko byasobanuwe haruguru. [14] Kubera izo mpamvu, Urukiko rurasanga uru rubanza rugomba gusibwa nk'uko biteganywa n'ingingo ya 59 (igika cya mbere) y'Itegeko N° 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, mu nteruro ya nyuma (in fine). III. ICYEMEZO CY'URUKIKO [15] Rwemeje ko ikirego cya Bizimana Twizerimana Théoneste cyo gusubirishamo ku mpamvu z'akarengane urubanza RCA0043/14/TGI/RBV rwaciwe n'Urukiko Rwisumbuye rwa Rubavu ku wa 04/06/2014 gisibwe.

4 Reba inyandiko ihamagara umuburanyi (assignation) yo kuwa 27/07/2017 n'inyandikomvugo y'umuhesha w'inkiko yo ku wa 02/08/2017 igaragara kuri iyo nyandiko y'ihamagara

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